IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1 OF 1995

Khaliquzzaman Rafiquzzaman]
Quadri, Age 40 years,]
Occ: Service, residing at]
16-Pacchha Peth]
Near Civil Hospital, Solapur]..Appellant

Versus

The State of Maharashtra]..Respondent

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Mr.R.M.Agarwal with Mr.Girish Agarwal Advocate for the Appellant
Mr.A.S.Shitole, A.P.P. for the State.

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : NOVEMBER 1,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant-original accused challenges the judgment and order dated 31st December, 1994 passed by the learned Special Judge, Solapur in Special Case No. 14 of 1991. By the said judgement and order, the learned Special Judge Solapur convicted the appellant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (hereinafter referred to as 'the said Act'). By the said judgment and order, the appellant is sentenced to R.I. for two years and to pay a fine of Rs.2000/- i/d to suffer R.I. for six months for the offence under Section 7

of the Act. For offence under Section 13(2) read with Section 13(1)(d), the appellant is also sentenced to R.I. for three years and to pay a fine of Rs.3000/- i/d to suffer R/I for nine months.

2. Briefly stated the prosecution case is as under:

. The complainant P.W.3 Shrikant Pujari was related to Malkari Gavade and P.W.4 Raosaheb Gavade. On 19.12.1988 both Raosaheb and Shrikant were injured as they received serious injuries in a scuffle and they came to be admitted to Cottage Hospital at Mangalwedha. The appellant Dr. Quadri was incharge of the said hospital. On the complainant coming to know that his relatives were injured and were admitted to the said hospital, he went to the hospital and met his relatives on 19.12.1988. It is the prosecution case that the appellant demanded Rs.500/- from the complainant for good treatment to his relatives and for issuing medical certificate to strengthen the case. The complainant asked the appellant to lessen the amount and amount was settled at Rs.350/-. Thereafter, on 24.12.1988 the complainant went to the hospital with one Tanaji Kamble resident of Miri, for giving Rs.350/-. However, when the appellant asked him for money, he gave him Rs.150/- stating that he did not have

Rs.350/-. Thereupon, the appellant asked him to bring amount of Rs.200/- on Monday i.e. on 26.12.1988. Thereafter, on 26.12.1988 the complainant approached Anti-Corruption Branch, Solapur and contacted P.W.6 P.I. Kadam and narrated his complaint to P.I.Kadam. His complaint Exhibit-50 came to be recorded. Thereafter, pre-trap formalities were carried out and the raiding party along with panchas went to the hospital. The complainant and panch witness P.W.1 Darphalkar entered the room where the appellant was sitting and the appeal asked him "PAISHYACHE KAY KELE, PAISHE ANALET KA?". Then complainant took out Rs.200/-. The appellant asked complainant whether the amount is correct and the complainant kept the money at the place pointed out by the appellant. Thereafter, a signal was given to the raiding party. Post trap formalities were observed. Thereafter, P.W.6 P.I. Kadam filed the complaint (Exhibit-50) at Mangalwedha Police Station. Thereafter, investigation was carried out. After completion of investigation, the charge sheet came to be submitted by P.W.7 P.I. Shaikh.

3. In due course, the charge came to be framed against the appellant for the offence under Sections 7 and 13(2) r.w. 13(1)(d) of the Prevention of

Corruption Act, 1988. The defence of the appellant is that the relatives of the complainant were serious and certain medicines were very much necessary for their treatment. The said medicines were not available in the hospital nor they were available at the Chemist at Mangalwedha, hence, appellant had provided the said medicines from his personal stock. The said medicines were of Rs.350/-. Hence, the complainant paid the amount to him towards those medicines.

4. During the course of the trial, seven witnesses have been examined by the prosecution. The star witness is P.W.3 Shrikant Pujari who is the complainant. After going through the evidence adduced by the prosecution, the learned Special Judge convicted and sentenced the appellant as stated in para no.1 above. Hence, this appeal.

5. I have heard Shri.R.M.Agarwal, the learned advocate appearing for the appellant and Mr.A.S.Shitole, the learned A.P.P. for the State. I have also perused the record pertaining to the said case. In my opinion, this appeal deserves to be allowed.

6. The prosecution case is mainly founded on the

evidence of P.W.1 Shrikant Pujari who is the complainant, Panch Witness P.W.1 Vyankatesh Darphalkar and P.W.4 Raosaheb Gavade. It is specifically the prosecution case that the money was demanded by the appellant for giving medical certificate for strengthening the case of the injured persons. P.W.6 P.I. Kadam has specifically instructed the complainant that on 26.12.1988 when they met the appellant, he should open the subject of the certificate and he should hand over money after the demand was made by the appellant. However, the complainant has admitted that when he met accused on 26.12.1988, he did not open the subject of the certificate. Thus, the case of the prosecution that money was demanded by the appellant for giving medical certificate capable of strengthening the case, has not been proved by the prosecution.

7. It is further specifically the case of the complainant that on 26.12.1988 after he reached the hospital along with panchas and raiding party, he first met with his relatives and his relatives told him that Dr.Quadri was enquiring about him and about money which was to be paid to Quadri and that due to the failure of complying to pay the same, stitches were not removed. However, this averment has been

found to be an improvement and therefore it cannot be relied upon. Moreover, panch witness P.W.1 Darphalkar does not state that any such talk took place between the complainant and the injured persons i.e. that Doctor was refusing to remove the stitches till the money was paid by the complainant. It is pertinent to note that the panch witness states that when he and complainant approached Doctor on 26.12.1988, the Doctor asked the complainant what happened about the amount relating to the medicines. Thereafter, Doctor asked the complainant that whether he brought money. Thereupon the complainant told that he had brought the money. Doctor was writing the prescription at that time and he pointed out the place with the pen where the complainant should put the money. Accordingly, complainant kept the money on the table. Thus, from the evidence it has come on record that the appellant had used some medicines from his own personal stock for the treatment of the two injured persons and he was asking for the money relating to the said medicines from the complainant.

8. The defence case that the accused had used medicines from his personal stock and he was seeking reimbursement of the same, is also supported by the evidence of P.W.2 Rajendra Phadnis who was

Pharmacist and Stock holder of the medicines in the Cottage Hospital at the relevant time. It was his duty to issue medicines to patients. He has stated that the medicines were issued free of charge. However, at the relevant time, Streptomycin, Bistrapen, Gentamycin (Nicholas) Decadron and various other injections were not available in the stock. From the papers relating to the treatment of these two injured persons which are at Exhibits-29 and 31 and pertain to Raosaheb Gavade and Malkari Gavade respectively, it is seen that these injections were administered to these patients. So also P.W.2 Mr.Phadnis, Pharmacist has admitted that these injections were given to the injured persons a number of times. He has also stated that cost of the medicines comes approximately to Rs.350/- to Rs.400/-. Dr.Quadri had treated those patients. Thus, it has come on record that these medicines were not available in the Cottage Hospital, yet these medicines were given to the two injured patients. From the medical papers relating to the treatment, it has come on record that on 19.12.1988 itself many injections were given to the two injured witnesses. There is no evidence on record that on 19.12.1988 the complainant or any other person had spent any amount on such medicines. It has also come in the evidence of this witness that these

medicines were necessary to save the patients. Mr.Phadnis has also stated that these injections were given by Dr.Quadri from his personal stock. As stated earlier, panch witness Mr.Darphalkar has stated that on 26.12.1988 the appellant asked the complainant what happened about the money of medicines and whether he has brought the money. None of the witnesses i.e. complainant nor panch witnesses have stated that at any time, the appellant asked for the amount to give a medical certificate which would strengthen the case or to give better treatment to the two injured persons. Infact, the complainant has stated that appellant asked him "PAISHYACHE KAY KELE, PAISHE ANALET KA?". (What have you done about the money, have you brought the money). The panch witness Mr.Darphalkar has specifically stated that the appellant had asked what happened to the amount of medicines. From the evidence which is on record, it does appear that the money which was asked by the appellant, was in relation to the medicines given by him to the two injured persons from his own personal stock. In addition to the defence taken by the appellant which is stated above, it is his further defence that the complainant misunderstood that the money demanded by the appellant for medicines as demand of bribe and therefore, he filed the complainant. The defence of

the appellant does appear to be very probable and it is also borne out from the record. It is well settled that the evidence of the defence need not be as strong as it is required for the prosecution. The Court has to see whether the explanation given by the defence is probable or not. Looking to the evidence on record, I am satisfied that the defence taken by the appellant is very much probable one. In such case, the appellant would be entitled to the benefit of doubt.

9. In the result, the appeal is allowed. The conviction and sentence of the appellant for the offence under Sections 7 and 13(1)(d) r.w. Section 13(2) of the Prevention of Corruption Act, dated 31st December, 1994 passed by the learned Special Judge, Solapur in Special Case No. 14 of 1991 is set aside and the appellant is acquitted thereunder. The fine amount if any, paid by the appellant, be refunded to the appellant. The appellant is on bail. His bail bonds shall stand cancelled.

[V.K.TAHILRAMANI.J]